

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ALAN C. PACIFIC and
LYNN M. STANCO,

Plaintiffs,

Case No: 2:18-cv-1097

and

ASCENSION SMART HEALTH FUNDED
EMPLOYEE BENEFIT PLAN,

Involuntary Plaintiff,

v.

COSTCO WHOLESALE CORPORATION and
XYZ INSURANCE COMPANIES,

Defendants.

RULE 26(f) JOINT SCHEDULING CONFERENCE REPORT

The parties/counsel identified below conferred as required by Red. R. Civ. P. 26(f) and the Local Rules, on August 22, 2018, and prepared the following report:

The initial conference required under Fed. R. Civ. P 16 and LR 16.2 is scheduled for an in-person scheduling conference on August 29, 2018, at 10:00 a.m., in Room 253 of the United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin, before United States Magistrate Judge Nancy Joseph. The attorneys who plan to participate in this conference are Robert M. Courtney for Plaintiffs, James M. Fredericks for Defendant, and Mary O. Levenhagen for Involuntary Plaintiff.

(1)(a) Plaintiffs' factual summary of the nature of the case, statement of bases of subject matter jurisdiction:

On July 8, 2015, plaintiff Alan C. Pacific entered the Costco store in Grafton Wisconsin, just after the store had opened at about 10:00 a.m. Mr. Pacific was one of the first customers to enter the store that day. He was pushing a large shopping cart provided by Costco proceeding down a non-food aisle. The floors appeared to be polished concrete. As Mr. Pacific was walking down the aisle, he suddenly slipped and fell very hard on a wet area on the floor left from cleaning done by Costco employees shortly before. The employees had not put up a "wet floor" sign or any other notice of the hazardous condition. Mr. Pacific sustained significant injuries to various parts of his body, including back injuries, neck injuries, hip injuries, and others injuries ultimately requiring

extensive medical treatment and surgeries. A number of the injuries sustained are permanent in nature, according to a number of his physicians. Plaintiff Lynn Stanco is joined in this litigation relative to claims of loss of society and companionship diminution of value of Mr. Pacific's services to maintaining the household.

With regard to the bases of subject matter jurisdiction, corporate defendant Costco's "principal place of business"/"nerve center" or "the place where the corporation's high level officers direct, control and coordinate the corporation's activities" is the State of Washington, and none of the parties are citizens of the same state. The amount in controversy exceeds \$75,000.00. Costco Wholesale Corporation is self-insured.

(1)(b) Defendant's factual summary of the case, statement of bases of subject matter jurisdiction:

This is an alleged slip and fall accident that occurred on 7/8/15 at Costco's Warehouse in Grafton. There are no known witnesses to the fall. The Plaintiff claims that he slipped on water. After the alleged fall, the Plaintiff continued and completed his shopping that morning. The Plaintiff claims that Costco was negligent and that Costco violated Wisconsin's Safe Place statute. Costco denies that it was negligent and Costco denies that it violated the Safe Place statute. Costco maintained their Warehouse as safe as the nature of the premises would reasonably permit. Among other things, Costco cleans the floor at least daily, and Costco does hourly walk-throughs. Costco contends that the Plaintiff was contributorily negligent.

The Plaintiff claims the following injuries: right knee, right hip, concussion, low back, neck, right shoulder and left wrist. His treatment included physical therapy, medications, injections, low back surgery, and hip surgery. He claims that his past medical bills total \$91,906.78. Costco denies that he sustained these injuries as a result of his alleged fall at the Warehouse. Costco further contends that areas of the body in which he claims injury were problematic for him before the alleged fall at the Warehouse.

With respect to subject matter jurisdiction, the amount in controversy exceeds \$75,000, and, this is an action between citizens of different states. The Plaintiffs are residents of Wisconsin. The defendant, Costco Wholesale Corporation, is incorporated under the laws of the State of Washington, and its principal place of business is also in Washington.

(1)(c) Involuntary plaintiff's factual summary of the case, statement of bases of subject matter jurisdiction:

The Involuntary plaintiff adopts the plaintiffs' factual summary and statement of bases of subject matter jurisdiction. It also adds that it is a self-funded health plan that provided medical benefits to or on behalf of Alan Pacific believed to be in at least the amount of \$77,802.32 for treatment received from July 16, 2015 through December 29, 2016.

(2) Whether the parties contemplate amending the pleadings, by joining parties or for other reasons:

Plaintiffs do not contemplate amending their pleadings or joining any additional parties, unless Costco Wholesale Corporation identifies any liability insurer (currently listed as “XYZ Insurance Companies”. Involuntary plaintiff Ascension Smart Health Self-Funded Employee Benefit Plan does not contemplate amending their pleadings or joining additional parties. Defendants Costco Wholesale Corporation does not contemplate amending their pleadings or joining additional parties.

- (3) Any motions which are contemplated at this time:
 - (a) Plaintiffs do not currently contemplate any motions at this time.
 - (b) Involuntary plaintiff does not contemplate any motions at this time.
 - (c) Defendant at this time contemplates dispositive motions in the future, including but not limited to a motion for summary judgment on the issue of actual notice and/or constructive notice.

- (4) Other matters as may affect the scheduling of this case for final disposition:

Involuntary Plaintiff anticipates serving Requests for Admissions and Interrogatories after the defense has completed any independent medical examination it may wish to perform.

Involuntary Plaintiff does not anticipate calling any additional witnesses beyond those that may be named by the plaintiffs and the defendant unless it becomes necessary to name representatives from either Ascension SmartHealth and/or First Recovery Group/Equian (which provides subrogation services) to testify regarding the provisions and funding of the plan as well as the payments it made.

DISCOVERY PLAN

- A. Initial disclosures will be made no later than 30 days after the 8/29/18 conference.
- B. Discovery will be needed with respect to liability and damages. We contemplate that discovery can be completed in 9 months. We do not believe that discovery should be conducted in phases or limited to or focused on particular issues.
- C. We do not anticipate at this time any issues regarding electronically stored information.
- D. We do not anticipate at this time any issues regarding privilege of or protection of trial preparation materials.
- E. We do not anticipate at this time any changes in the limitations on discovery imposed under the rules.
- F. We do not anticipate at this time any other orders under Rule 26c or 16((b) and (c).

Date: August 22, 2018

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Date: August 22, 2018

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Date: August 22, 2018

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